IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 598 OF 2005

Shri Lalji Patel & Anr. .. Appellants

Vs.

The Municipal Corporation of
Gr. Mumbai .. Respondent

WITH

APPEAL FROM ORDER NO. 602 OF 2005

Shri Shamji Nahi Patel & Anr. .. Appellants

Vs.

The Municipal Corporation of
Gr. Mumbai .. Respondent

WITH

APPEAL FROM ORDER NO. 604 OF 2005

Shri Farid Irani & Anr. .. Appellant

Vs.

The Municipal Corporation of
Gr. Mumbai .. Respondent

WITH

APPEAL FROM ORDER NO. 609 OF 2005

Shri Savji Patel & Anr. .. Appellants

Vs.

The Municipal Corporation of
Gr. Mumbai .. Respondent

Mr. A.Y. Sakhare, the learned Senior Counsel with
Mr. G.V. Murti for Appellants.
Ms. Geeta Jogalekar for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : July 01, 2005.

P.C.:

1. All these appeals arise from the rejection of Notices of Motion taken out in four different suits i.e. L.C. Suit Nos.5456, 5460, 5457 and 5455 of 2000 by separate orders dated 29/3/2005 passed by the learned Judge of the City Civil Court at Mumbai.

2. The suits arose from the show cause notice dated 25/4/2000 issued by the respondent-Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act, 1888. It was alleged that in the open space, adjacent to the Abdul Buran Building located at Junction of 9th and 33rd Road, Old Khar, Bombay - 52, the notice structure admeasuring 6.50 x 3.65 mtrs. with 3.10 mtrs. height was put up with

B.M. wall, ladi coba slab and was being used for commercial purpose. The structure had four different occupants and, therefore, the notices were issued to all these occupants in addition to the original owner of the said building i.e. Abdul Buran Building. Replies were submitted initially by Abdul Buran Building owners and subsequently by the occupants as well denying the allegations and contending that the notice structures were not newly put up and they were there prior to the datum line. They were heard and the Ward Officer, H/West Ward of the respondent - Municipal Corporation rejected all these contentions vide his order dated 15/9/2000 and called upon the owners as well as each of the occupants to demolish the said illegal structure within 15 days, failing which they would be liable for penal action under Section 475-A of the M.M.C. Act and to bear the cost of demolition. This order came to be challenged by filing four different suits by four occupants and by filing the Notice of Motion separately in each suit they had prayed for temporary injunction. By the impugned order the said Notices of Motion have been dismissed and thereby an ad-interim orders also stood

vacated.

3. Mr. Sakhare, the learned Senior Counsel for the appellants-plaintiffs referred to the show cause notice dated 25/4/2000 and the advocate's reply thereto submitted on or about 2/5/2000 and contended that the Ward Officer in his order dated 15/9/2000 failed to consider all these nine documents in support of the contention of the plaintiffs that the notice structure was not unauthorised. These documents were as under :-

(1) Copy of city survey plan for CTS No.F-220.

(2) Copy of extract from Property Card Register for survey no.F-220.

(3) Copies of the assessment bills for ward No.H-5161(2) and HW-5175(1).

(4) Copy of notice dated 13.2.1998 under section 167 of Mumbai Municipal Corporation Act.

(5) Copies of Letters dated 14.2.1989 and 29.4.1999 from Assistant Assessor of Collector H/West Ward.

(6) Copy of letter dated 12.1.1989 from Assistant Engineer (Building & Factory) H/West Ward.

(7) Copy of letter dated 17.1.1989 addressed to Assistant Engineer (Bldg. & Fact.) H/West Ward.

(8) Copy of notice dated 8.5.1989 under No.HW/21289/AEB under section 488 of Mumbai Municipal Corporation Act.

(9) Copy of letter dated 5.7.1989 from Shri Prabhakar S. Pai.

4. The trial court considered all these contentions afresh and turned down all the pleas raised against the said order at least for prima facie consideration. The conclusion drawn by the trial court is that the notice structure is not part of the main building and it had come up in the open space sometimes in 1997, initially as a kaccha structure and subsequently converted into pakka structure in 1998 or thereabout. Mr. Sakhare, the learned Senior counsel for the appellants submitted that the conclusions drawn by the trial court are based on total misreading of the documents and the documents are indicative that the notice structure exists even prior to 1961-62. He also referred to the observations made by the trial court regarding the payment of taxes on the basis of

the rateable value changed from time to time i.e. on 1/4/1997 and again on 1/4/1998. It was also submitted that initial notice was issued on 12/1/1989 and when the owner had submitted the reply to the Municipal Corporation and the Ex-Mayor was requested to intervene, the Corporation kept mum for about 12 years and the suit notices came to be issued on totally false and fabricated grounds.

5. The trial court considered the issue of prima facie case for granting injunction along with the issue of balance of convenience in favour of the plaintiffs and both these issues have been answered in the negative. The first document was extract from the Property Register Card and it was in respect of C.T.S. No.F/220. This document did not show the existence of the notice structure. Exhibit-B was the bill issued by the Assessment Department in respect of House No.H/516(2) 86A on which Abdul Buran Building was standing and this assessment was for the period from 1/10/1971 to 31/3/1972. It indicated the assessment of a house which is a multi storied building. The

third document is Exhibit B-2 which was assessment bill for the year 1988-89 only for the out house property of Abdul Buran Building. This document indicated that the building existed prior to 1961-62 but it did not show the existence of the notice structure. The fourth document was at Exhibit B-3, a special Notice informing the increase in rateable value showing house with shed and detached shed of Shri Abdul Burani of House. The rateable value was shown at Rs.11,395/-. This rateable value came to be increased during the assessment year 1999-2000 to Rs.13,625/- as per the document at Exh.B-4. If we compare the documents at Exhibits B-2, B-3 and B-4 the prima facie observations made by the trial court would be squarely justified for the following reasons.

6. Vide communication dated 14/2/1989 the Assessor and Collector addressed a letter to M/s.Gaiyur Abdulla Mistry, Abdul Buran Building and provided the extract from the assessment book. The property standing on the plot was as under :-

HOUSE

Ground Floor

Wholly let	Rs.90-00s

1st Floor

Wholly with owners	Rs.95-00E
A.C. Shed 3 rooms let	Rs.30-00s
Total Rent	Rs.215-00

R.V. Rs.2,255/- N.P.A.

Assessment Book Extract for the year 84-85

Ward No.	Street No.	Description	Name of the Assessee	R.V.
HW-5162(2)	86A, Khar Road	House	Abdul Buran Mistry	Rs.1350/-

Assessment with effect from prior to 61-82

5175(1)	66D Khar Road	House	Abdul Burhan Mistry.	Rs.2257/-

Assessment with effect from prior to 61-62

. In the communication dated 29/4/1999 the added property to the above said property is clearly shown as detached tiled shed and it reads as under:-

Detached Tiled shed :

Room No.1 used as Shop area 18.58 m	Rs. 278.70
Room No.2 used as shop cum office area 16.25 m	Rs. 243.75
Shop No.1 area 9.29 m with low height wooden loft used as store let	Rs. 300.00
Shop No.1A area 9.29 m with low height wooden loft used as store let	Rs. 278.70
Total Rent Rs.1481.20	Rs.1481.20

7. Mr. Sakhare, the learned Senior counsel for the appellants submitted that the A.C. shed having three rooms area was the notice structure and this submission cannot be accepted if regards be had to both these communications. The A.C. shed three rooms showed in the communication dated 14/2/1989 is clearly the shed on the terrace of the multi storied building as is obvious from the communication dated 29/4/1999. The notice structure is the detached tiled shed and, as submitted by the Corporation, it came up as a kaccha structure in the open space adjacent to the main building in 1997 and in the next year it was converted into pakka structure and on account of its

change in user i.e. commercial the rateable value was changed with effect from 1/4/1999. It is thus clear that the prima facie observations made by the trial court that the notice structure was not part of the main building as on the datum line cannot be faulted with and, in fact, these observations are supported.

8. The reasoning given by the trial court thus does not call for any interference and the finding that the notice structure is not part of the main building, which is an authorised structure, cannot be held to be illegal even for prima facie considerations. Resultantly, all these appeals must fail at the threshold.

9. In the result, the appeals are hereby dismissed in limine.

. Mr. Sakhare, the learned Senior counsel submitted an oral application to continue the stay for four weeks. The application is hereby rejected.

(B.H. Marlapalle,J.)